

**James Madison to James Monroe, November 27,  
1784. Transcription: The Writings of James Madison,  
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,  
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**TO JAMES MONROE. MAD. MSS.**

Richmond, Novr 27, 1784.

Dear Sir, —Your favor of the 15th inst: came to hand by thursday's post. Mine by the last post acknowledged your preceding one. The umbrage given to the Comsrs. of the U. S. by the negotiations of N. Y. with the Indians was not altogether unknown to me, though I am less acquainted with the circumstances of it than your letter supposes. The Idea which I at present have of the affair leads me to say that as far as N. Y. may claim a right of treating with Indians for the purchase of lands within her limits, she has the confederation on her side; as far as she may have exerted that right in contravention of the Genl Treaty, or even unconfidentially with the Comsrs of Congs, she has violated both duty & decorum. The foederal articles give Congs the exclusive right of *managing all affairs* with the Indians *not members* of any State, under a proviso, that the *Legislative authority* of the State within its own limits be not violated. By Indians not members of a State, must be meant those, I conceive who do not live within the body of the Society, or whose Persons or property form no objects of its laws. In the case of Indians of this description the only restraint on Congress is imposed by the *Legislative authority* of the State.

If this proviso be taken in its full latitude, it must destroy the authority of Congress altogether, since no act of Congs. within the limits of a State can be conceived which will not in some way or other encroach upon the authority [of the] State. In order then to give some meaning to both parts of the sentence as a known rule of interpretation requires,

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we must restrain this proviso to some particular view of the parties. What was this view? My answer is that it was to save to the States their right of preemption of lands from the Indians. My reasons are. 1. That this was the principal right formerly exerted by the Colonies with regard to the Indians. 2. that it was a right asserted by the laws as well as the proceedings of all of them, and therefore being most familiar, wd be most likely to be in contemplation of the parties. 3. that being of most consequence to the

States individually, and least inconsistent with the general powers of Congress, it was most likely to be made a ground of Compromise. 4. it has been always said that the proviso came from the Virga Delegates, who wd naturally be most vigilant over the territorial rights of their Constituents. But whatever may be the true boundary between the authority of Congs & that of N. Y., or however indiscreet the latter may have been I join entirely with you in thinking that temperance on the part of the former will be the wisest policy. I concur with you equally with regard to the ignominious secession at Annapolis. As Congs are too impotent to punish such offences, the task must finally be left to the States and experience has shewn in the case of Howel that the interposition of Congs. agst an offender instead of promoting his chastisement, may give him a significancy wch. he otherwise wd never arrive at and may induce a State to patronize an act which of their own accord they would have punished. I am sorry to find the affair of Mr. de Marb—s. taking so serious a face. As the insult was committed within the jurisdiction of Pena, I think you are right in supposing the offender could not be transferred to another jurisdiction for punishment. The proper questions therefore are 1. whether the existing law was fully put in force agst him by Pa? 2. whether due provision has been made by that State agst like contingencies? Nothing seems to be more difficult under our new Governments than to impress on the attention of our Legislatures a due sense of those duties which spring from our relations to foreign nations. Several of us have been labouring much of late in the G. Assembly here to provide for a case with which we are every day threaten'd by the eagerness of our disorderly Citizens for Spanish plunder & Spanish blood. It has been proposed to authorize Congs Whenever satisfactory proof shall be given to them

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by a foreign power of such a crime being committed by our Citizens within its jurisdiction as by the law of Nations call for a surrender of the Offender, & the foreign power shall actually make the demand, that the Executive may at the instance of Congs apprehend & deliver up the offender. That there are offences of that class is clearly stated by Vattel in particular, & that the business ought to pass through Congs. is equally clear. The proposition was a few days ago rejected in Comittee of the whole. To-day on the report of the Come it has been agreed to by a small majority. This is the most material question that has agitated us during the week past. The Bill for a Religious Assest has not been yet brought in. Mr. Henry the father of the scheme is gone up to his Seat for his family & will no more sit in the H. of Delegates a circumstance very inauspicious to his offspring. An attempt will be made for circuit Courts, & Mr. Jones has it in contemplation to try whether any change has taken place in the sentiments of the H. of D. on the subject of the Treaty. He will write to you by this post & I refer to him for what I may have omitted.

With sincere regard & esteem I am Dr Sir

Yr friend & servt.